

ENVIRONMENTAL RESEARCH
CENTER, INC.,
Plaintiff,
v.
PREMIER HEALTH, LLC,
Defendant.

Case No. 21-cv-06509-MMC

**ORDER GRANTING PLAINTIFF'S
MOTION TO REMAND; DENYING
MOTION FOR ATTORNEYS' FEES
AND COSTS; REMANDING ACTION
TO STATE COURT; VACATING
HEARING**

Before the Court is plaintiff's Motion, filed September 16, 2021, to Remand and for Attorneys' Fees and Costs, whereby plaintiff asserts the Court lacks jurisdiction over the above-titled action on the grounds that (1) plaintiff lacks standing under Article III of the United States Constitution, and (2) the amount in controversy does not exceed \$75,000. Plaintiff also seeks to recover attorneys' fees and costs incurred in connection with the removal. Defendant has filed opposition, to which plaintiff has replied. The Court, having read and considered the papers filed in support of and in opposition to the motion, deems the matter appropriate for decision on the parties' respective written submissions, VACATES the hearing scheduled for November 12, 2021, and rules as follows.

I. Article III Standing

The burden of establishing Article III standing is on "[t]he party invoking federal jurisdiction." See Lujan v. Defenders of Wildlife, 504 U.S. 555, 561 (1992). In the instant case, defendant, as the party invoking federal jurisdiction, thus bears the burden of demonstrating plaintiff suffered an "injury in fact" that is "fairly traceable to [defendant's alleged wrongful] conduct" and "likely to be redressed by a favorable judicial decision."

1 See Spokeo, Inc. v. Robins, 578 U.S. 330, 338 (2016) (setting forth “irreducible
2 constitutional minimum of standing”) (internal quotation and citation omitted). To meet
3 the “injury in fact” requirement, defendant must show plaintiff suffered “an invasion of a
4 legally protected interest” that is “concrete and particularized” and “actual or imminent,
5 not conjectural or hypothetical.” See id. at 339 (internal quotation and citation omitted).
6 The “injury in fact” requirement is not “automatically satisf[ied] . . . whenever a statute
7 grants a person a statutory right and purports to authorize that person to sue to vindicate
8 that right,” but only where the alleged statutory violation caused the plaintiff to suffer
9 “some real—as opposed to purely legal—harm.” See Robins v. Spokeo, Inc., 867 F.3d
10 1108, 1112 (9th Cir. 2017) (internal quotation and citation omitted). Where a plaintiff
11 lacks an “injury in fact” caused by the assertedly wrongful conduct of the defendant, such
12 plaintiff lacks Article III standing, and, consequently, the district court lacks subject matter
13 jurisdiction over the claim. See Spokeo, 578 U.S. at 338.

14 Here, defendant has not met its burden to show plaintiff suffered an “injury in fact.”
15 In particular, plaintiff, a “non-profit corporation dedicated to . . . helping safeguard the
16 public from health hazards,” brings its claims under California’s Safe Drinking Water and
17 Toxic Enforcement Act of 1986 (“Proposition 65”) solely “as a private attorney general
18 enforcer and in the public interest” (see Compl. ¶¶ 1-2), and does not, contrary to
19 defendant’s assertions, allege it ever ingested, was exposed to, or was harmed by
20 defendant’s products. Consequently, plaintiff does not have Article III standing. See,
21 e.g., Toxic Injs. Corp. v. Safety-Kleen Corp., 57 F. Supp. 3d 947, 953 (C.D. Cal. 1999)
22 (finding no Article III standing where plaintiff bringing action under Proposition 65 was a
23 “public benefit corporation” that “claim[ed] to have suffered no injuries” and “merely
24 assert[ed] the legal rights and interests of third parties”); Brimer v. Amash Imps., Inc., No.
25 C11-5291 EMC, 2012 WL 13080724, at *5 (N.D. Cal. Jan. 10, 2012) (finding no Article III
26 standing where Proposition 65 complaint “contain[ed] no allegations that [p]laintiff ha[d]
27 ever used or been exposed to any of [d]efendants’ products, nor that he ha[d] ever
28 suffered harm from such use or exposure”).

1 Accordingly, the above-titled action will be remanded to state court. See 28
2 U.S.C. § 1447(c); Polo v. Innoventions Int'l, LLC, 833 F.3d 1193, 1196 (9th Cir. 2016)
3 (citing “rule” that “a removed case in which the plaintiff lacks Article III standing must be
4 remanded to state court”).¹

5 **II. Attorneys' Fees and Costs**

6 An order remanding a case to state court “may require payment of just costs and
7 any actual expenses, including attorney fees, incurred as a result of the removal.” See
8 28 U.S.C. § 1447(c). “[A]bsent unusual circumstances,” however, “courts may award
9 attorney’s fees . . . only where the removing party lacked an objectively reasonable basis
10 for seeking removal.” See Martin v. Franklin Capital Corp., 546 U.S. 132, 141 (2005).
11 Moreover, a “removal is not objectively unreasonable solely because the removing
12 party’s arguments lack merit, or else attorney’s fees would always be awarded whenever
13 remand is granted.” See Lussier v. Dollar Tree Stores, Inc., 518 F.3d 1062, 1065 (9th
14 Cir. 2008).

15 Here, plaintiff contends defendant lacked an objectively reasonable basis for
16 removal because (1) plaintiff “clearly pled its [c]omplaint in the public interest with no
17 injury in fact,” and (2) plaintiff’s counsel, before filing the instant action, “made several
18 attempts to reach counsel for the [d]efendant to discuss and demonstrate . . . removal of
19 this case was without merit” and “provided [d]efendant’s counsel with case law showing
20 that [p]laintiff lacked Article III standing.” (See Mot. at 11:12-18; Declaration of Charles
21 W. Poss in Support of Motion to Remand ¶¶ 4-6.) In response, defendant states it
22 “acknowledged the cases cited by [p]laintiff” but “informed [p]laintiff that it would not
23 agree to remand” because the issue of standing in cases such as this “has yet to be fully
24 decided.” (See Opp. at 5:16-19; Declaration of Yosef Peretz in Support of Defendant’s
25 Opposition ¶ 4); see also Toxic Injs., 57 F. Supp. 2d at 957-58 (declining to award

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¹ In light of such finding, the Court does not address herein plaintiff’s arguments
28 pertaining to the amount in controversy.

1 attorney's fees in connection with remand; noting defendants' reliance on "fact the United
2 States Supreme Court and the Ninth Circuit have not addressed" issue of removal of
3 action brought by public beneficiary corporation under Proposition 65).

4 The Court finds defendant's arguments in support of standing, although ultimately
5 not persuasive, are not objectively unreasonable. Put another way, the Court "cannot
6 find that [d]efendant's removal was so obviously barred as to warrant an award." See
7 Toxic Injs., 57 F. Supp. 2d at 957-58.

8 **III. Conclusion**

9 For the reasons set forth above, plaintiff's Motion to Remand is hereby GRANTED,
10 plaintiff's Motion for Attorneys' Fees and Costs is DENIED, and the above-titled action is
11 REMANDED to the Superior Court of California, in and for the County of Alameda.

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13 **IT IS SO ORDERED.**

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15 Dated: November 2, 2021

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MAXINE M. CHESNEY
United States District Judge